

Gal 11 Q. J.

REFLECTIONS
OCCASIONED BY THE
FREQUENCY OF FIRES IN THE METROPOLIS;
WITH
THOUGHTS
ON MEASURES FOR ADDING TO PUBLIC SECURITY,
AND
REMARKS
ON THE
LAW OF ARSON.

ADDRESSED TO
THE RIGHT HONOURABLE LORD KENYON,
Lord Chief Justice of England.

BY PHILANTHROPOS.

By. George Griffin Esq^r. afterwards Stonestreet.

VIVENDUM EST ILLIC, UBI NULLA INCENDIA, NULLI
NOCTE METUS.

Juvenal.

TERTIA RATIO VINDICANDI EST, QUÆ *παράδειγμα* A
GRÆCIS NOMINATUR; QUUM PUNITIO PROPTER EX-
EMPLUM EST NECESSARIA; UT CÆTERI SIMILIBUS
A PECCATIS, QUÆ PROHIBERI PUBLICITUS INTE-
REST, METU COGNITÆ POENÆ DETERREANTUR.

Aulus Gellius.

L O N D O N:

SOLD BY

G. G. J. and J. ROBINSONS, Paternoster-row;
J. DEBRET, Piccadilly; J. WHIELDON, Fleet-street; and
J. SEWELL, Cornhill.

M.DCC.XC.

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REFLECTIONS

OCCASIONED BY THE

DISCOVERY OF THE METEORITE

WITH

THEORY OF THE

ON THE MEANS OF ASSESSING ITS VALUE

AND

A MEMORIAL

TO THE

LAW OF THE



BY THE

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TO THE
RIGHT HONOURABLE
L O R D K E N Y O N,
LORD CHIEF JUSTICE OF ENGLAND.

MY LORD,

THE Writer of the following pages,
having had occasion to make
enquiry into the laws for the punish-
ment of Incendiaries, has imagined
that they are defective and inadequate
to the public security. He therefore
ventures to suggest some legal pro-
visions, which he believes to be con-
formable to the spirit of the laws of
England; and, as he has presumed
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(without having solicited your permission) to address them to your Lordship, he thinks it incumbent on him to assign his reasons for taking that liberty.—His first inducement arises from the hope that your Lordship may, by his humble endeavours, be led to contemplate the subject ; it is fully understood that, it is become a maxim of the legislature, not to make any alterations in the penal law, without the concurrence of the Judges ; and the efforts, which have been made by your Lordship, in the exercise of your high office, to correct the depravity of the times, warrant him in the belief that you will be ready to countenance any proper measure

measure for lessening the frequency of a crime, which is become highly alarming to the community.

A further advantage he has proposed; by presuming on your Lordship's name, is the attention which he expects will be drawn from the profession, at the head of which your Lordship is so eminently placed, and which may occasion a disquisition from pens more equal to the task of demonstrating what is necessary to be done for the public safety.—He feels that he ought to make a further apology for obtruding his thoughts on your Lordship; but, he trusts, it will be perceived, that he has no other motive in this publica-

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tion but a desire to be instrumental to the peace and safety of the public.

With most perfect respect,

He begs leave to subscribe himself,

Your Lordship's

Most obedient servant,

A. B.

G. G.

I N T R O.

INTRODUCTION.

THE frequency of fires in the Metropolis have long been subjects of observation and of complaint.—Of the numerous calamities to which mankind are liable, there is no one which excites more uneasy sensations or to which persons of all ranks are more equally exposed.—To guard against one of its evils, namely, the distress and ruin which might fall on individuals, from the sudden destruction of their property, associations have been formed in many civilized states, by which the loss of sufferers became divided amongst a great number of persons and thus was easily borne.—These institutions probably owed their rise to an observation of the convenience and advantages of insuring ships and
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and merchandize against the perils of the sea :
—a practice which had prevailed for ages before insurance against fire was set on foot.

But, whilst men became enabled, by this means, to secure themselves from *pecuniary* loss, they opened a new inlet for *personal* danger;—a temptation was created for the indigent and unprincipled; the prospect of wealth without labour, or of relief from present distress, might sometimes urge to the commission of a crime, which is such an outrage to every humane feeling, that some will be ready to censure the bare supposition that it can exist. —There are, however, not a few, who, from having had many occasions to be convinced of the reality—of the frequency of this crime of wilful burning to defraud insurers, are too apt to fall into indiscriminate suspicion, and impute almost every disaster to this cause; not considering from how many innocent causes fires may arise, in a city where so many thousands of persons are at work in manufactories, at all hours in the night, where there are such immense repositories of combustible materials; —nor reflecting that drunkenness, or gross carelessness,

carelessness, to which so many of these misfortunes may be traced, are left without punishment or the smallest legal censure*, however extensive the mischief they have occasioned.

To remove the pretence for unfounded and injurious calumnies ;—to recommend a moderate and suitable punishment for *culpable* carelessness ;—and to deter the wicked, whether stimulated by malice, or by fraud, from attempting this violence on the community, by the certainty of immediate enquiry and by the probability of detection, are the objects of this publication.

* The writer is not ignorant of the 6th *Anne*, which provides a punishment for careless *servants* ;—it will be remarked upon hereafter.

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ON THE LATE FREQUENCY OF
FIRES IN LONDON.

*Curfory View of the State of the Law for
Punishment of Incendiaries.*

A R S O N, the crime of wilfully and maliciously setting fire to the house of another, has ever been deemed by the law of England a capital offence; and persons convicted thereof were consigned to the punishment of death, both by the civil and the common law. By statute 9. Geo. I. and further, 9. Geo. III. the like punishment is denounced “ for the wilful burning or setting
“ fire to all kinds of mills, or to any hovel,
“ cock, mow, or stack of corn, straw, hay, or
“ wood.”—Although it does hence appear, that wilful and malicious burning is an offence of the highest magnitude in the eye of the law, there remains a subtle distinction, under which Incendiaries, in some cases, may escape

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the punishment due to the crime: and that the guilt of wilful burning may be proved, under certain circumstances, without exposing the offender to the punishments of felony.

The case of Pedley of Bristol, a few years since, made This apparent.—Pedley, by setting fire to his own house, had burned or damaged the house adjoining—he was indicted for setting fire to his neighbour's house and convicted—his counsel offered some objections to the indictment and prayed an arrest of judgment, which was granted—the judges, at length, decided against the validity of the indictment; Lord Mansfield (if I am rightly informed, and, if not, I should be glad to be set right) on delivering the report, expressed some difference of opinion upon the matter.—Pedley's case occasioned more discussion of the laws for punishment of wilful burning than had arisen for some time before, and the following statement will be found to be nearly conformable to the principles then laid down, and, it is believed, to the subsequent practice; viz.

That a man wilfully setting fire to his own house, such house being situated in a park or field,

field, distant from a town, or from other houses, is not liable to be indicted under any form whatever.

That in case a man wilfully sets fire to his own house, such house being situated in a town, or contiguous to other houses, he is liable to be indicted for a misdemeanor.

And, that any man wilfully setting fire to the house of another—or who by setting fire to his own house has destroyed or damaged the house of his neighbour, becomes liable to be indicted for the crime of Arson, and will, on conviction, be subject to the pains of death, as in other cases of capital felony.

That doubts have arisen, whether an indictment would not be in force under the statute called the Black Act, for a man's wilfully setting fire to his own house, although no other house should be destroyed; but that the opinion of the courts has rather preponderated against the validity of such an indictment.

That no statute has been made to inflict any punishment whatever upon any person for wilfully setting fire to his house, TO DEFRAUD THE INSURERS—and that, although this is sometimes made a count in an indictment, it is nevertheless not a necessary one and is only

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That no statute has been made to inflict any punishment whatever upon any person for wilfully setting fire to his house, **TO DEFRAUD THE INSURERS**—and that, although this is sometimes made a count in an indictment, it is nevertheless not a necessary one and is only

made use of for the purpose of bringing forward such evidence as may arise under that head, to prove that a crime, PUNISHABLE UPON OTHER GROUNDS, has actually been committed.

This enumeration is not supposed to be complete, but may be sufficient for the purpose.—It need not be observed, that the writer is not a professor of the law.

It seems evident, that the maxims of the common law, in respect to this offence, had taken a settled form, prior to the invention of FIRE INSURANCE, which is an establishment of a later period (scarce any traces of it being to be found, in this country, before the present century); and it will require (it is imagined) but little argument to shew, that this commercial precaution, having excited a new species of temptation, it is expedient that the laws should provide an adequate remedy for the public danger which arises therefrom.

How has it happened that the wilful burning of any “ mill, hovel, cock, mow, or stack of corn, straw, hay, or wood,” should have been made capital felony, by two statutes, without

without any notice being taken in the same statute of the crime of wilfully setting fire to a dwelling-house?—Either a notion prevailed that the latter crime was already provided against by the laws in being*; or (which seems to be most probable) the Legislature, in making those statutes, intended to deter and to punish Incendiaries *from without*, such as were stimulated by malice only; and had not received any complaint of internal Incendiaries, stimulated by fraud, by an intention to cheat their insurers.

* Indeed all the niceties and distinctions which we meet with in our books, concerning what shall, and what shall not amount to *Arson*, seem now to be taken away by a variety of statutes, which have made the punishment of wilful burning equally extensive as the mischief. Blackstone's Com. vol. iv. cap. 16.—The following words in the same chapter are however contradictory to this assertion and shew that niceties and distinctions still remain.

Whether the Benefits of Insurance are a Compensation for its Evils.

THE horror and calamity to which the peaceable and honest part of the community are frequently exposed, by the machinations of Incendiaries, have led some persons to doubt whether the benefits of insurance are a compensation for its evils ?

A well-meaning man, in a paroxysm of rage against these cruel disturbers of the public repose, declared, that, " if he were an absolute prince, he would not suffer one person in his dominions to be insured against fire."

But, let the question be examined with temper, and it will be found, that insurance is a great source of private comfort—a security to commercial transactions—and a stimulus to industry, by adding (and at a very light expence) stability to possession.—If we argue against its utility, because it is liable to be abused, might we not, by the same sort of reasoning, explode every other institution of civil and commercial society ?——But, sanctioned by the practice of enlightened nations

tions around us—by the manifest advantages which have been experienced at home—and by the authority of the Legislature, which has pronounced upon its utility, we may assert with confidence and with truth, that,

Insurance against fire is an excellent institution, whose utility is sanctioned by law and confirmed by experience; and that insurers ought to be protected from fraud, as much as merchants or traders of every other description.

It has been already observed, that no statute has been provided for this purpose; and, that the maxims of the common law do not apply to the case.

ENQUIRY, whence it arises that the destruction of a Ship, in order to defraud the Insurers, has been made Felony—and that the wilful burning of a House, for the like fraudulent purpose, is not rendered penal by any Statute.

BY 4 of Geo. I. chap. 12. it is enacted, That whoever shall wilfully sink, or otherwise destroy a Ship, in order to defraud the insurers, shall be deemed guilty of felony without benefit of clergy.—Has it ever been alledged, that the provisions of the above act were unnecessary, or the punishment which it ordains too severe for the crime ?

The act of the Incendiary, who wilfully sets fire to his own House, to defraud the insurers, includes every species of guilt which is connected with the felonious destruction of a Ship ; and its perpetration is fraught with far more dangerous consequences to the community. In the latter case, a man fits out a Ship and cargo of small value, and, having obtained insurance to a greater amount, he contrives

trives to burn or sink her, in some obscure bay, or on some coast, where himself and his accessories may preserve their persons from harm.—The injury extends only to the insurers; and it is no inconsiderable security to them, that this offence can seldom be perpetrated without a confederacy; which, of course, renders the act more dangerous to the offenders, and multiplies the channels for detection.——

But the House-Incendiary wants no assistant. Alone, and in the dark, he lifts his desperate hand against society and trusts to his hypocrisy to enable him to act the farce of terror, of grief, and of suffering; to turn aside enquiry and to excite commiseration from his injured neighbours;—unless, indeed, (as hath been too frequently the case) he should think it more conducive to his safety to excite suspicions against his innocent and injured servants or inmates*.

* The quality of this offence is thus described by Judge Blackstone, vol. iv. c. 16.

'It is also frequently more destructive than murder itself, of which too it is often the cause: since murder, atrocious as it is, seldom extends beyond the felonious act designed; whereas fire too frequently involves in the common calamity persons unknown to the Incendiary and not intended to be hurt by him and friends as well as enemies!'

The

The destroyer of a Ship does no injury to any other property, and causes no terror or annoyance; but the wretch who sets fire to his House cannot tell what may be the extent of the mischief he may do—how much property may be destroyed; what lives may be lost; how many may be maimed or crippled; what sufferings may be entailed, through life, to women and children, from the terror of the scene; how many may be driven from the comforts of home, and from their employments, to rely on the precarious and humiliating aid of charitable assistance, for covering for their limbs, for shelter to their houseless heads.

Another circumstance, which distinguishes this crime, is *the premeditation which is essential to it*; perhaps there is not another, in the catalogue of offences to which the law has annexed the severest punishments, which requires such an apparatus of preparation, or which lies so long brooding in the mind. In short, as robbery, accompanied with violence, is in every other case deemed felony, it should seem that the wilfully setting fire to a house, to defraud the insurers, ought to be penal in the same extent, and that it would be scarcely

scarcely too much to say, that the several crimes of treason*, murder, robbery, and perjury, are all included in this diabolical act †. The destruction of a Ship, to defraud the insurers, hath been rarely attempted, at least since the statute above-mentioned, if we may form a judgment from the very small number of prosecutions which have been grounded upon it; but the burning of Houses, to cheat the Insurance Companies, is a crime which, notwithstanding its enormity, hath been often practised, as the numerous convictions and outlawries, which have followed indictments, sufficiently prove. The names of Ward, Brehme, Pedley, Grieve, Petch, Scofield, Peirce, Jacomi, Aldridge, Battle, Clary, Passmore, and several more, against each of whom the proofs have been complete: the many others, wherein the culprits have escaped prosecution from the timidity of ma-

* In Ireland, wilful burning is deemed high treason.

† It appears the crime of wilful burning was held in great detestation by our ancestors. The punishment of Arson was death by our ancient Saxon laws. And in the reign of Edward the First this sentence was executed by a kind of *lex talionis*; for the incendiaries were burnt to death—as they were also by the Gothic constitutions. Comm. vol. iv. c. 16.

gistrates;

gistrates * ; not to particularize a more numerous class, where the insurers, judging the proofs of guilt too imperfect to warrant prosecutions, have resorted to arbitrations, to check or moderate the intended fraud.

Whence it has arisen, that the fraudulent setting fire to a house, to defraud the insurers, has not been rendered penal by statute, in like manner with the wilful destruction of a ship for the same purpose, cannot, as I imagine, be otherwise accounted for, than that the legislature has been applied to for a remedy in the one case ; but has not received any complaint or application on the other.

But methinks I hear some disciple of *Beccaria* exclaim, What ! have we not capital punishments enough already ? I hope to convince him, that my endeavours are directed to diminish, not to encrease the frequency of them. “ The certainty of punishments is of more

* In the year 1787, Wyvill, a foreigner, residing in Bloomsbury, effected his escape to the continent, in consequence of the delay in granting a warrant to apprehend him. The detection was complete and the circumstances very curious ; the perpetrator having contrived to induce his servants to believe that he was gone to France three days before the event ; during all which time he had remained concealed in his bed-chamber.

consequence

consequence than the severity," is the remark of a writer of distinguished accuracy*; it is to deter from the attempt, by rendering it more difficult to escape detection, and to expose the offenders to such punishment as the law has already provided, that I have taken up the pen. It was scarcely possible to touch the subject, without remarking the incongruities of the law as it now stands; and it seems further important, in a moral view, apart from legal consideration, that this crime should not be mentioned but in terms of detestation suitable to its atrocious nature. The moral sense, we may yet hope, operates with great force upon human conduct; but it is weakened when the qualities of actions are confounded by legal ordinations; as when they annex the same denomination, and ordain the like punishment, for the offence of writing a libel, as for the burning a house: to the man who perhaps in a fally of wanton wit has ridiculed a worthless individual, and to him who, combining the meanness of a lyar and a pilferer, with the ferocity of a ruffian, spreads dismay, perhaps ruin, amongst his sleeping unsuspect-

• Mr. Paley.

ing neighbours, and places in the imminent hazard of a violent death those servants and inmates who relied on him for protection.

Whether the penalties of the 4th of Geo. the 1st ought to be extended to such as may be found guilty of setting fire to their own houses, is left to the consideration of those to whose province it belongs to superintend the public safety:—prevention, not punishment, is *my* object.

*Of the Means of rendering less frequent the
Annoyance of Fire in London.*

THAT prevention is better than punishment is an axiom of the most approved writers on penal laws.—That there are reasonable precautions and courses now untried, which would extend to the more effectual prevention of fires, whether arising from innocent or accidental, from faulty or from criminal causes, will be endeavoured to be shewn.

I must here beg leave to observe, that the *mere apprehension of fire*, to persons who reside in, or occasionally resort to populous cities and towns, and especially to the metropolis, is in itself a very serious evil, operating upon some minds with such incessant force as to prove a considerable abatement of the enjoyment of life. Those who have witnessed the confusion, the terrors, the agonies of the wretched inhabitants of a district, which a fire disturbs, driven from their houses (sometimes at a midnight hour, and in an inclement

ment season) well know how difficult a task he would undertake who should attempt to describe the horrors of such a scene and will be disposed to receive with candour any proposal, which tends to confine within the bounds of actual and unavoidable casualty, the recurrence of such events and to diminish the sum of those uneasy sensations.

The means of prevention which are proposed are of two kinds; viz. a FIRE WATCH, or patrol of Engineers and Firemen, through every part of the metropolis, in all hours of the night, throughout the year. The other, a FIRE JURY.

A Fire Watch.

WHENCE does it arise, that there are commonly more conflagrations in London in one year than in Amsterdam and Hamburgh in seven?—Because, in the latter cities, there is a constant *fire watch* in the night. Insurance is as general in each of them as in London yet fires seldom happen.—In London there are numerous bodies of firemen, *but they all go to bed at sunset!*—The protection of the public from the ravages of fire has devolved on the Insurance Companies.—It is true, every parish is compelled by law to keep an engine or engines; and certain rewards are provided to encourage the early bringing them to the place of accident;—to obtain the reward is the first business of a street watchman upon the appearance of fire; but the labour and skill, which are necessary to overpower the flames, is usually supplied by the office firemen.—It would be an injustice to those men, to mention them without remarking, that the boldness and intrepidity which they display on such occasions (whilst it ex-

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cites the admiration of the beholders, and particularly of foreigners) gives them a claim to public consideration; and the protection from being impressed for the naval service, which has been granted to them by act of parliament, must be thought equally proper as a reward for their services and as a precaution for the public security.

The maintenance of these men, the providing engines, and other necessary apparatus for the extinguishing fires, are attended with an incredible expence; and, it may be wondered at, that some endeavours have not been made to render this force of more effect.—It is surely unreasonable, that a great number of men, maintained expressly for the purpose of giving assistance in case of fire, should go to rest at the time when other watchmen begin their duty, and when their immediate presence would be most desirable, without leaving even one of their number to summon the rest.—Yet the night-time is the season in which fire is most to be dreaded, as, from inebriety, and various other causes, this calamity is most frequent during the hours of rest.

During the long frost of the winter,
1788,

1788, and at the time of the late illuminations for his Majesty's happy recovery, some of the Insurance Companies made an experiment of a FIRE WATCH, and had great reason, it is said, to be satisfied with its effect. Every street was perambulated at least twice in the night; and, the stations were so contrived, that effectual aid would have been rendered in a few minutes, in any part of the town. It is obvious, that such a measure must tend to give a much earlier and more efficacious assistance, when accidents arise—that the persons on this duty would obtain a more perfect knowledge of the resources of water in every district:—and almost every one may remember cases, where the presence of six firemen, within five minutes after the first alarm, could have rendered more important services than it were possible for twenty times that number to perform, by arriving fifteen minutes later*.

* The firemen are usually chosen from amongst persons who reside on the banks of the river, being chiefly watermen, or lightermen: as they are very liable to be called up in the night, they commonly go to rest at an early hour: and, notwithstanding their alacrity in attending upon any summons, it frequently happens, the flames have made great progress before their arrival and it has become very difficult to stop their ravages.

It cannot be doubted that such a regulation must have a very powerful tendency to prevent fraudulent attempts; for the certainty of effectual assistance near at hand would at once render the Incendiary more liable to detection and would cut off his prospect of success, by a prevention of the mischief which was to furnish a pretence for his fraudulent demand.

It may be thought that a proposal of this kind should rather be made to the Insurance Companies, at whose expence it is proposed to be executed, than to the public at large; but it should be noticed, that the assistance of the magistrates and the approbation and concurrence of householders in general would be necessary to give efficacy and energy to such a measure.

That the encreased vigilance of the Insurance Companies, within a few years past, has very much reduced the danger from fire in the metropolis, has been remarked by several *Magistrates*; that a much greater degree of public security might be expected to arise from the precautions here recommended appears to be a reasonable presumption; indeed the writer acknowledges that he should expect the effects

fects of a spirited and well-enforced regulation of this kind would be so considerable as to supersede the necessity of any other.

The engines might also be rendered far more effectual, if three or four of them were kept in readiness, in proper stations, to start at a moment's warning. Much time is lost at present—the key of the engine-house is to be sought for—the ostler is to be called up—the horses to be harnessed, and put to—and other preparations to be made; it is true, according to the method which now prevails, they may be ready as soon as the engineer who is to direct them.——Whilst several hundreds of pairs of horses stand in the streets all night, for purposes of convenience or amusement, surely three or four sets might be kept in harness for the public comfort and security.

A Fire Jury.

THE English law makes great provision to guard the life of every subject. If a man be found dead in a field, without any marks of violence, or finishes his course by any accident, it becomes the duty of the coroner to make an

inquisition into the causes of his death—
Whence comes it, then, that a conflagration,
which has endangered the lives of many, (or
in which some persons may have been burnt to
ashes) is not the subject of any legal enquiry?
In many well-regulated cities, the causes of
a fire are immediately investigated before a
magistrate *: this seems to be very reasonable,
and the omission appears to be a defect in
our police.

In order to render more intelligible the fol-
lowing proposal, it may be convenient that
the principal causes of Fires should be enu-
merated and considered in classes:—As first,
such as are

Purely accidental.	{ Caused by lightning ; { By fermentation and com- bustion of some sub- stance not before known to be liable to take fire by such means.
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* ON Saturday, October 30, a most alarming Fire
broke out in the City of Edinburgh—with the account
sent of it to London is added—

“ THE LORD PROVOST AND MAGISTRATES ARE
THIS DAY MERITORIOUSLY EMPLOYED IN TAKING A
PRECOGNITION ABOUT THE FIRE THAT HAPPENED
ON SATURDAY NIGHT, WHICH IS SUSPECTED TO
HAVE BEEN WILFUL.”

2. Com-

Of this second class are such as have arisen from some decay or defect in a building ;

From chimnies too long unswept ;

From the process of manufactories ;

From flues, stoves, furnaces, &c.

These are sometimes more reprehensible from the owner having already experienced the danger of their construction or position.

2. Compound ;

being partly accidental, and partly occasioned by want of due care, or by the omission of some reasonable precaution :

of which some are innocent causes, and others culpable in different degrees.

From GROSS CARELESSNESS: *which comprehends the higher degrees of this class: as—*

Drunkenness ;

Reading in bed by candle-light ;

Boiling pitch or melting glue in places surrounded with shavings ;

Leaving linen to dry by fire-heat, without some person to watch ;

Discharging fowling-pieces amongst thatched buildings ;

Using candles, without lanterns, amongst horse litter.

3. Wilful
and
felonious;
being either
fraudulent or
malicious.

{ The third class comprehends the
criminal cases, whether perpe-
trated from motives of fraud
or malice; as,
By servants, to conceal depreda-
tions;
By revengeful and malicious per-
sons;
By Incendiaries from without, to
make opportunity for plunder;
By malice in the owner—to injure
the estate of his landlord—to
defeat the reversioner of his
succession—to deceive his cre-
ditors—to cheat his insurers—
or, for other wicked and des-
perate purposes.

On the subject of a Fire Jury, let us
suppose, that within twenty-four hours after
any fire should have happened, which should
have destroyed a dwelling-house, it should
be made obligatory upon the churchwarden,
overseer, or constable, to give notice to the
coroner (or to the nearest magistrate); upon
the receipt of which notice, it should be
incumbent upon the coroner or magistrate
(as should be deemed most adviseable) forth-

with to convene a Jury of householders of the vicinity; such Jury to be impanelled and sworn in like manner as when inquisition is made before the coroner, in cases of violent death; that the coroner or magistrate should by his warrant call in a surveyor of buildings, who should also be sworn; and that all persons capable of giving evidence, touching the cause and manner of the fire, or of any matter relating thereto, should be compellable to attend, and deliver upon oath an account of all matters within their knowledge, any way relating to the fire and the causes thereof. That the coroner or magistrate, attended by the jury and by the surveyor, should make an inspection of the ruins—and, having deliberated thereon, and upon the whole of the evidence, the jurymen should deliver their verdict; which, it is presumed, might be rendered (according to the case) under some of the following terms, viz. That the said fire had happened,

1. From an *accidental* cause—or
2. From some *unknown* cause.
3. From *neglect* of necessary repairs.
4. From *negligence* in not causing the chimnies to be duly swept.

5. From

5. From the bad construction of the building, or of some flue, stove, or furnace, &c. as the case might be.

6. From process of manufactory—as by the bursting of a still, or a retort; the melting of wax, or making of varnish.

7. From *carelessness* of A. B. a servant of the sufferer.

8. From *malice*, by some person unknown.

9. From *malice* of a person known and discovered, to be named in the verdict, in like manner as when a verdict of wilful murder, or of manslaughter, charges a particular person with the offence.

IT IS EVIDENT, that, under the two first cases (which, it is hoped, would be found to include the far greater number) the innocence of the master and his family would be vindicated and proclaimed.

That the 3d, 4th, 5th, and 6th, would charge some degree of negligence on the occupier, his landlord, his inmate, or on some other person.

The 7th would define exactly the offence which the statute “*6th of Anne*” was intended to remedy.

The

The 8th and 9th would furnish proper ground for an immediate pursuit and prosecution.

From such an enquiry these effects might be expected:

1. That innocence would be protected from slander and reproach. From the many discoveries and convictions which have taken place against wretches for setting fire to their houses, it has too frequently happened, that innocent and worthy persons, such as would shudder at the idea of so horrid a crime and to whom such an imputation must be insupportable, have fallen under groundless suspicions and calumnies, which an immediate, public and authorized inquiry into the facts of the case would have prevented or have removed.

2. It would render the detection of guilt more certain and more easy; and the certainty that investigation must follow would operate to deter evil-minded persons from a crime to which they are now tempted by the prospect of impunity, arising from the neglect of proper enquiry.

3. It would restrain *carelessness* of every kind. The penalty of £. 100, directed by the "4th of Anne," has scarcely ever been levied—it would

would be thought a harsh measure in any one who should cause a servant to be proceeded against for a penalty, which, in most cases, would extend to the ruin of the party; yet *gross and culpable carelessness* in respect to fire, whether in a *Servant* or *Master* of a family, ought to be punished or censured in some manner; and a moderate fine *certainly* levied would operate in a stronger degree on the conduct of servants, than the threat of a ruinous fine, or imprisonment as held out in the act before-mentioned, which, from its non-use, is considered as a mere bugbear and produces no effect whatever.

4. And, finally, Such a court of enquiry would receive in course all the information which ought to be had on such an occasion, without entailing on any one the charge of officiousness or the odious name of an informer.

In a few words, the object of a Fire Jury is this: that fire being an event full of danger and disaster, the public ought to be satisfied respecting the cause, if it lies within the reach of discovery, in order that the innocent may be freed from slander.

That *culpable carelessness* may find a certain
and

and moderate punishment ;——and that immediate pursuit, and the vengeance of the laws, may overtake the wilful incendiary, whether actuated by malice or by fraud *.

In what Manner the Expences of a Fire Jury ought to be defrayed.

IT would be proper that suitable compensation should be made to the coroner (if employed) and to such other persons as should be required to take a part of the burthen of the proposed investigation—and it seems to be not impracticable that the charge should be levied, not only without injury to the public, but in such manner as might prove instrumental to the beneficial purpose for which the enquiry itself is proposed ; viz. THE REDUCING THE NUMBER OF FIRES. The sum of ten pounds for every such enquiry would probably be sufficient.

* The measure of a *Fire Jury*, if it should hereafter be adopted in the metropolis, might easily be extended to other parts of the kingdom.

Might not the Jury be safely entrusted with the power of determining by whom the charges of the enquiry should be defrayed?—not arbitrarily, but with reference to the nature of their verdict.

As,——Whether the same should be discharged by the person in whose house or premises the fire began—by his servant or inmate—by the insurers*—or how otherwise?

In the cases, N° 1 and 2—it should seem the expence might be reasonably divided between the Proprietor of the Buildings, the Owners of the Goods, and the Insurers (in case the damage has happened to property which stood insured),—because such Owners and the Insurers are jointly benefited by the enquiry; the former, by the public exoneration even from the imputation of carelessness; the latter, by the protection of their interest.

But, in both these cases, where it unfortunately happens that the sufferer is uninsured (as the verdict would imply that the disaster had arisen from some unavoidable casualty, and that there was no ground to impute

* Insurers means either contributioners or other companies.

blame of any kind to him) it might be a hardship that his misfortune should be aggravated by the expences of the enquiry. In such cases, therefore, and in such only, the amount might be levied out of the common stock of the ward, parish, or district, in which the event had arisen.

——The 3d, 4th, 5th, 6th, and 7th cases would impute *negligence* of some kind or degree on some person; but, as the degrees would be various, it might not be always proper to levy the whole of the expence upon the person whose neglect had occasioned the misfortune;—but, where it should be manifest that the mischief had arisen from the *gross and culpable carelessness* of any one, whether master or servant, it then seems reasonable, that the charge of that enquiry, which their misconduct had occasioned, and which had been productive of so much terror and distress to others, should be defrayed at their own proper expence.

The charge of the inquest, in the eighth or ninth cases, should be borne by the insurers (in case the property were insured) else by the public, i. e. by the district.

It

It is always supposed, that the charge should be *certain and invariable in the aggregate, and in its distribution*—that it should be paid immediately by the churchwardens*; who should be invested with due powers to enable them to recover the amount from the person or persons upon whom the order of the jury should have fixed the ultimate payment.

That the operation of such a fine would be any hardship upon a careless servant will hardly be alledged, as the law, since the “*6th of Anne*,” has made them liable to the heavy fine of £.100, or of eighteen months imprisonment, for such misconduct.

It would be still less grievous upon the *Master* of a family, when a conflagration had been caused by his own culpable negligence.—Before the statute last mentioned, every man stood exposed to an action of damage from his neighbour, (even for the carelessness of his ser-

* In like manner as the charge attending chimney accidents is now defrayed.—It may not be improper to remark, that since the charge for the attendance of the engines, upon the occasion of chimnies taking fire, has been made to fall upon the occupier of the house, or apartment, in which such accident occurs, chimnies have been more regularly swept and alarms from that cause have become less frequent.

vant, in the use of fire*.) The ground upon which this ancient maxim of the common law was then superseded, will require to be further examined hereafter: at present, the circumstance is mentioned to shew, that a charge operating as a very moderate fine for a culpable neglect, whether levied on a master or servant, ought not to be deemed a hardship, or mistakenly supposed to be an innovation.

* By the common law, if a servant kept his master's fire negligently, so that his neighbour's house was burnt down thereby, an action lay against the master, because this negligence happened in his service; but now the common law is altered, by stat. 6 Ann. c. 3. which ordains, that no action shall be maintained against any, in whose house or chamber any fire shall accidentally begin, *for their own loss is sufficient punishment* for their own or their servant's carelessness. But if such fire happens through negligence of any servant, (whose loss is commonly very little) such servant shall forfeit £.100, to be distributed amongst the sufferers; and in default of payment, shall be committed to some workhouse, and there kept to hard labour for eighteen months.

Upon a similar principle, by the law of the twelve tables at Rome, a person by whose negligence any fire began, was bound to pay double to the sufferers, or, if he was not able to pay, was to suffer a corporal punishment.

Blackstone's Comm. lib. i. ch. 14.

Of fraudulent Claims upon Insurers against Fire.

THE laws and usages which relate to the insurance contract, in respect to *Sea risk*, have undergone frequent investigation; and the decisions which have taken place on a great number of cases form a code, the principles of which have been often examined and were lately fully elucidated by a learned and ingenious writer*. As that work was professedly written to explain the law of *marine insurances*, it could not be expected that much information would be given on the subject of FIRE INSURANCE, one short chapter only being set apart on that head. As little is to be gathered from Millar, Welsted, Anderson, Postlethwaite, or the *Lex Mercatoria*; and nothing from older publications. The truth is, there have been very few appeals to the courts upon fire insurances; for the major part of the fire societies and companies have stipulated for an arbitration in case of dispute, and their disputed claims have commonly been brought to settlement

* Mr. Park on Marine Insurances.

through

through that medium. The termination of a contest, upon any question of account, by arbitrators indifferently chosen, whilst it is attended with far less expence and loss of time, to the parties in difference, is as likely to produce a just and equitable settlement as a proceeding at law, where at last the opinion of a jury of merchants must decide; or very frequently a single juror becomes the arbitrator, under the direction of the court.— I cannot avoid observing here, that an investigation of the office and duty of an arbitrator and of the proper rules and methods for conducting arbitrations would be a valuable present to the commercial world at this time, when occasions for dispute are multiplied by the extent of our trading concerns, and, many submit to injustice, rather than seek their right through a sea of vexation and expence.—The determinations of arbitrators between the insurers and the insured, in fire cases, would have a large and beneficial influence on society, if the Referees were not sometimes restrained, by extreme delicacy, from going the full length which the evidence before them would authorize.

Mr. Paley has justly observed, that “ In in-

surances, in which the underwriter computes his risk entirely from the account given by the person insured, it is absolutely necessary to the justice and validity of the contract, that this account be exact and complete."

Mr. Park and other writers have made similar remarks ; and repeated determinations on *marine insurances* shew that concealment or misrepresentation of material facts are fatal to a policy. The proposals of the Sun Fire Office, one of the oldest companies, declare the contract void, both in the case of misrepresentation in *founding the insurance* and of fraud in the *allegation of loss*. Yet it hath very often happened, that arbitrators, who have been fully satisfied that an attempt to commit a gross fraud on the insurers hath been established in evidence before them, have contented themselves with cutting off the excrescences only and have awarded the claimant as much as it has appeared he had really lost. This is doing justice by halves:— if a man who has suffered a loss of two hundred pounds, shall dishonestly claim five hundred from his insurers, he ought, if detected, to forfeit the benefit of that contract which he has dared to abuse. There have been,

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however,

however, some cases, wherein arbitrators have totally set aside an exorbitant claim on insurers, one of which deserves to be particularly mentioned—it occurred about ten years since, and is well remembered in the district in which the conflagration took place. A tradesman, whose house was burnt down, carried in a claim for a total loss to the office in which he stood insured; some anonymous hints were sent in writing, to warn the Insurance Company of fraud; but, having no other ground to doubt the fairness of the case, they very properly slighted an unauthenticated charge, passed the account, and fixed a day for the payment. In the meantime several of the claimant's neighbours, who had obtained a knowledge of facts which had not reached the insurers, went in a body to the office, and desired that a due investigation might take place: upon this application the office required an arbitration, and bonds were executed, by which the claim became submitted to three gentlemen of known respectability (magistrates of the county of Surry); they examined a great number of witnesses upon oath, and, being satisfied from the evidence that the claim was

full of fraud and exaggeration, they set it aside *in toto* by their award, and the claimant never recovered one shilling. The justice of the award was never disputed and does not appear to have been doubted by any person whatever.

Observations on the Act 6th Anne. Cap. 3.

THIS statute ordains, that no action shall be maintained against any in whose house or chamber any fire shall accidentally begin; and assigns as the reason for this provision, that "their own loss is sufficient punishment for *their own* or their servant's carelessness."—But the reason assigned no longer exists; for since the invention, or at least the adoption, and the practice of insurance against fire, it is not a *necessary* consequence, that a man whose house is accidentally burnt down, should suffer *any* loss—for it is in his power, and it is common (at least with the greater number of householders) to keep the property fully insured: and although every honest man is, notwithstanding his

his insurance, usually a sufferer when a fire happens in his house—by the loss of time, and the interruption of his concerns—yet this is often compensated by the melioration of his premises and is sometimes followed with improvement of his interest from public countenance and protection.

It is further evident, that the shelter of insurance was not in the purview of the legislature, at that time, because the practice either had not then commenced in this country, or, if some attempts to form associations or companies had been made, the knavish part of mankind had not then learned the trick of abusing them. The effects which were produced by this alteration of the law, which relieved every man from responsibility to his neighbour, for the consequences of his negligence in this respect, deserve to be well considered: the culpability of the *servant* was provided against, by the punishment which was denounced upon his fault;—*but ought not some provision to have been made to secure the future care of the Master, in a matter which so much concerned the peace and safety of his neighbours?* But now, since the prevalence of insurance

insurance, has removed from him, or put it in his power to avoid, the damage to his own property (*the loss of which the statute relied on as a sufficient security for his care*) does it not become necessary that some provision should be made to enforce that attention which every honest member of society must feel he owes to his neighbours, and from which (morally considered) no statute can discharge his obligation?—These observations are made to shew that it would not be a hardship upon any householder to be made liable to pay the charges of such an enquiry as is proposed in the former chapter, whenever a jury should determine that a conflagration had arisen from his *own carelessness* or from *neglect* of some reasonable and obvious precaution.

Conclusion.

Conclusion.

IT may be proper to add a few observations, to prevent mistakes.—Satisfied of the rectitude of the motives which have induced him to call the public attention to this subject, the writer would not think it necessary to explain them, if he did not apprehend that the arguments which he has offered might lose a part of their weight, from a misconception of this point.

It may be conjectured, that the measures proposed are intended for the service of the Insurance Companies. The writer avows, that he should consider this as a fair object; and does not hesitate to assert, that it is equally a public interest to protect insurers from fraud, as, to prevent forgery, or the making of counterfeit money.—The protection of insurers is, properly speaking, that of the insured part of the public: for the rate or price of insurance must ultimately depend upon the paucity or frequency of fires; and whether the indemnity

indemnity to be obtained be sought through the medium of associations or contribution-ship societies, or purchased of Insurance Companies, the rates must be commensurate to the whole of the claims; as well those which are founded on fraud or on gross and culpable negligence, as such as may be occasioned by pure and unavoidable casualty.—The interest of insurers is, therefore, that of the public.—But it is not with an eye to the benefit of insurers, that these hints are thrown out. It will admit of much doubt, whether the fullest adoption of the measures proposed would be any advantage to them: for, as it is obvious, that it is from the frequency of alarms, and the continual apprehension of danger, that much of their business arises, it may be argued, that whatever should diminish the danger of annoyance by fire would narrow their practice and lessen their importance. Having, therefore, declared what is *not* his motive, he will assign the reasons which have emboldened him to solicit the public attention.

He imagines, that it stands unquestionably proved, that the crime of wilfully setting fire to
to

to houses, to defraud the insurers, has often been perpetrated; and that the law has not made any provision, *quoad hoc*, to prevent or to punish the offence. He has thought the safety and peace of the public concerned, that the legislature should prevent the frequency of this crime, either by annexing, in all cases, a punishment suitable to its enormity, or by regulations which might remove the temptation which the prospect of impunity excites. The latter has appeared to him most conformable to the benevolent policy of modern times; and in that persuasion he has suggested *means of prevention*, which he thinks would be found adequate to the end proposed.—If he could hope, that any thing which he has offered might under the improvements of those whose immediate duty it is to watch over the public safety be rendered efficacious to that end—if he could propose the means which might save one family from the distress and ruin which too often attends this calamity—if he could ward off the danger of unworthy suspicions from innocent and deserving members of society—or remove the snares of temptation, which

which have in numerous instances led to the perpetration of this heinous crime, he would be amply compensated for his labour, and would endure with patience and with cheerfulness those censures, to which his zeal in the service of the public may possibly expose him.

F I N I S.

The first of these two measures, namely the establishment of a Fire watch, was effected by the writer at great trouble, not in the manner he projected at public expense, but by the cooperation of the Sun Fire Office the Phoenix & the Royal Exchange, who alone bore the cost of it, the other Insurance Societies, who equally benefited by the protection and timely aid of such a watch, nevertheless declining to contribute any thing towards the maintenance of it.

G. J. G. S.